

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

JUSTIN GARDNER,

Petitioner,

vs.

TAGGART BOYD,

Respondent.

**8:21CV121**

**MEMORANDUM AND ORDER**

This matter is before the court on the Notice of Appeal (filing 34) filed by Petitioner on December 27, 2021, and a memorandum from the Clerk of the Court requesting a ruling as to Petitioner's authorization to proceed in forma pauperis on appeal (filing 35). Petitioner seeks to appeal the court's Memorandum and Order (filing 26) entered on October 28, 2021, denying Petitioner leave to appeal in forma pauperis in his prior appeal in this case; the Mandate (filing 25) issued by the Eighth Circuit Court of Appeals on October 25, 2021, in accordance with the Judgement (filing 19) entered September 27, 2021, dismissing Petitioner's initial appeal in this case; the Judgment (filing 31) and Mandate (filing 32) issued by the Eighth Circuit Court of Appeals on December 1, 2021, denying Petitioner's motion for authorization to file a successive habeas application; and the Eighth Circuit Court of Appeals' Judgment (filing 33) entered on December 9, 2021, dismissing Petitioner's previous appeal for lack of jurisdiction.

This is the third appeal Petitioner has filed in this case. The court dismissed Petitioner's habeas petition with prejudice on June 28, 2021 (filings 8 & 9), and Petitioner prosecuted an unsuccessful appeal of that judgment in which the Eighth Circuit Court of Appeals denied a certificate of appealability and dismissed the appeal on September 27, 2021 (filing 19; *see also* filing 25). Petitioner then filed a second frivolous appeal in which he purported to challenge the denial and dismissal of his initial appeal. (Filing 20.) That appeal was likewise unsuccessful.

(*See* Filing 33.) Now, Petitioner is back and purportedly trying to challenge his failed second appeal.

Petitioner's appeal is clearly frivolous and not taken in good faith as he has already prosecuted an appeal of this court's judgment dismissing his habeas petition and he is improperly attempting to have the Eighth Circuit reconsider orders and judgments that essentially have already been reviewed on appeal. Thus, Petitioner may not proceed in forma pauperis on appeal. *See* Fed. R. App. P. 24(a)(3) and 28 U.S.C. § 1915(a)(3).

IT IS THEREFORE ORDERED that: Petitioner may not proceed on appeal in forma pauperis. This matter is closed, and Petitioner should refrain from filing any further frivolous appeals.

Dated this 6th day of January, 2022.

BY THE COURT:



Richard G. Kopf  
Senior United States District Judge